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IN THE

Supreme Court of the United States

BP AMERICA PRODUCTION COMPANY AND
ATLANTIC RICHFIELD COMPANY,
Petitioners,

v.

REBECCA W. WATSON,
ASSISTANT SECRETARY OF THE INTERIOR FOR LAND
AND MINERAL MANAGEMENT, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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PETITION FOR A WRIT OF CERTIORARI

Petitioners Atlantic Richfield Company ("ARCO") and BP America Production Company—successor in interest to Amoco Production Company ("Amoco") and Vastar Resources Inc. ("Vastar")—respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-20a) is published at 410 F.3d 722 (D.C. Cir. 2005). The opinion of the district court (App., *infra*, 21a-56a) is published at 300 F. Supp. 2d 1 (D.D.C. 2003). The September 12, 2000, decision of the Department of Interior's Minerals Man-

agement Service (App., *infra*, 68a-97a), MMS-97-0155-O&G; the March 24, 2000, decision of the Minerals Management Service (App., *infra*, 98a-126a), MMS-0063-O&G, MMS-97-0191-O&G; the February 26, 1998, decision of the Minerals Management Service (App., *infra*, 127a-143a), MMS-97-0315-O&G; the May 27, 1997, Minerals Management Service Letter Order to Amoco Production Company (App., *infra*, 144a-156a); and the January 22, 1997, Minerals Management Service Letter Order to Atlantic Richfield Company (App., *infra*, 157a-169a), are unreported.

STATEMENT OF JURISDICTION

The judgment of the court of appeals was entered on June 10, 2005. The court of appeals denied a petition for rehearing on August 24, 2005 (App., *infra*, 175a). This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Relevant provisions of Section 17 of the Mineral Leasing Act of 1920, 41 Stat. 437, codified as amended at 30 U.S.C. § 226, are reprinted at App., *infra*, 176a-178a. Section 2 of the Act of July 18, 1966, Pub. L. No. 89-505, 80 Stat. 304, codified as amended at 28 U.S.C. § 2415, is reprinted at App., *infra*, 179a-182a.

STATEMENT OF THE CASE

I. Statutory and Regulatory Background

This case raises an issue of profound economic importance involving hundreds of millions of dollars—the proper method for measuring royalties owed to the government under the Mineral Leasing Act, as well as the proper construction of the statute of limitations governing actions for money damages for breach of contract.

A. Royalties Under The Mineral Leasing Act

1. The modern system of oil, gas, and mineral royalties—as the word "royalty" itself suggests—derives from the English feudal system. During the middle ages, the crown might grant the right to mine but "typically

reserved part of all the ore to be delivered 'on top of the ground free of charge,' which was also called 'royalty.'" John S. Lowe, *Defining the Royalty Obligation*, 49 SMU L. Rev. 223, 258 (1996). That in-kind payment was, by its nature, made at the mine. Although the crown had a right to a share of the valuable extracted materials, it did not have a right to any increase in value derived from further refinement of the materials or from their transportation to locations closer to the point of consumption. *Ibid.*

When private and public parties adopted royalty systems for oil and gas leases in the United States, they followed the same pattern. Leases requiring the payment of a portion of "'market value,' 'amount realized,' and 'market price' were used in royalty clauses * * * to describe a royalty *at the production point*, before the lessee applied its entrepreneurship to enhance value by transporting, processing or marketing the gas." Lowe, *supra*, at 259 (emphasis added).

2. When Congress adopted the Mineral Leasing Act ("MLA"), 30 U.S.C. § 181 *et seq.*, in 1920, it acted against the backdrop of that settled practice. Under the MLA, the Department of Interior ("DOI") issues and administers oil and gas leases for federal lands. 30 U.S.C. §§ 181-287. Lessees must pay the royalty established in the lease, but the royalty cannot be less than "12½ per centum in amount or *value of production* removed or sold *from the lease*." 30 U.S.C. § 226(b)(2)(A)(ii) (emphasis added). For at least the first 60 years following the MLA's enactment, the DOI and the Mineral Management Service ("MMS")—the division of the DOI responsible for collecting and verifying revenues due under the MLA—implemented Section 226 in accord with well-established royalty rules. In particular, the "value of production * * * from the lease" was measured "at the well." See *Indep. Petroleum Ass'n of America* v. *Armstrong*, 91 F. Supp. 2d 117, 125 (D.D.C. 2000), *rev'd in part, aff'd in part*, 279 F.3d 1036 (D.C. Cir. 2002); pp. 17-18, *infra*.

In 1988, the MMS revised its rules governing the valuation of gas from federal leases for royalty purposes. See *Revisions of Gas Royalty Valuation Regulations and Related Topics*, 53 Fed. Reg. 1230 (Jan. 15, 1988). Those regulations once again addressed the need to value production "from the lease" pursuant to the MLA when the production is *transported* to points of sale off the lease. *Id.* at 1257.[1] The rules codified the "DOI policy since 1961," which was "to grant transportation allowances when production is moved to a sales point off the lease in order to calculate *the value of the product at the lease.*" *Ibid.* (emphasis added). In other words, where the value of gas is enhanced by moving it away from the wellhead for sale, transportation related costs are deducted to derive the value of the gas at the wellhead. As the MMS explained:

> Where the value of gas has been determined * * * at a point (*e.g.*, sales point or point of value determination) off the lease, MMS shall allow a deduction for the reasonable actual costs incurred by the lessee to transport unprocessed gas, residue gas, and gas plant products from a lease to a point off the lease including, if appropriate, transportation from the lease to a gas processing plant off the lease and from the plant to a point away from the plant.

30 C.F.R. § 206.156(a) (1988). The rules confirm the agency's "past and present practice generally to allow," for royalty valuation purposes, cost adjustments that are "directly related to the transportation of lease production." 53 Fed. Reg. at 1261.

The MMS's 1988 rulemaking also codified the agency's "long standing policy that costs incurred to place production

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[1] While potentially confusing, the word "lease" in the oil and gas industry means either the "contract" or "agreement" providing for the right to extract, "or *the land area covered by that authorization*, whichever is required by the context." 30 C.F.R. § 206.151 (emphasis added).

in a marketable condition are to be borne solely by the lessee." 53 Fed. Reg. at 1243. As the MMS recognized in its notice of proposed rulemaking, that policy had been upheld by the D.C. Circuit in *California Co.* v. *Udall*, 296 F.2d 384 (1961). In that case, the D.C. Circuit affirmed the agency's interpretation of the phrase "value of production" to mean the value of gas conditioned to meet the quality requirements of the receiving pipeline at or within a short distance of the wellhead. See *Revisions of Gas Royalty Valuation Regulations and Related Topics*, 52 Fed. Reg. 4732, 4734 (Feb. 13, 1987).[2] By referencing quality standards at or near the wellhead, the decision in *California Co.* assured that royalty valuations would be determined—consistent with historic practice—at or in the immediate vicinity of the lease.

The 1988 rulemaking adopted the following marketable condition rule:

> The lessee is required to place gas in marketable condition at no cost to the Federal Government or Indian lessor unless otherwise provided in the lease agreement. Where the value established pursuant to this section is determined by a lessee's gross proceeds, that value shall be increased to the extent that the gross proceeds have been reduced because the purchaser, or any other person, is providing certain services the cost of which ordinarily is the responsibility of the lessee to place the gas in marketable condition.

30 C.F.R. § 206.152(i) (1988).

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[2] In the *California Co.* decision, the D.C. Circuit emphasized that—although the producer may be required to incur costs to condition the gas to meet the requirements of the receiving pipeline at or within a short distance of the well—the producer was not required to incur any transportation costs to move the gas "from the field in the neighborhood of the wells." *California Co.*, 296 F.2d at 387.

The regulations further defined "marketable condition." In the *California Co.* case, "marketable condition" was determined to be the quality standards specified by the producer's *wellhead* sales contracts. 296 F.2d at 387-88. Likewise, the MMS's 1988 regulations defined "marketable condition" as a condition "accepted by a purchaser under a sales contract typical for the field or area." 30 C.F.R. § 206.151. The definitions of the terms "field" and "area" reference the oil and gas producing reservoirs underlying the lease. *Ibid.* Consistent with *California Co.* and the "from the lease" requirement of the MLA, those definitions limited the "typical sales" to sales for the field or area in the immediate vicinity of the lease. *Ibid.*

B. The Statute of Limitations

This case also concerns the application of the six-year statute of limitations found at 28 U.S.C. § 2415(a). When Congress initially enacted the MLA in 1920, it did not include a limitations period for government actions to collect payments or royalties. In 1966, Congress enacted a six-year limitations period for government actions for money damages for breach of contract. Act of July 18, 1966, 80 Stat. 304, codified as 28 U.S.C. § 2415(a). That provision declares that "every action for money damages brought by the United States or an agency or an officer or agency thereof which is founded upon any contract * * * shall be barred unless the complaint is filed within six years after the right of action accrues or within one year after final decision shall have been rendered in applicable administrative proceedings required by contract or by law, whichever is later."

Congress later amended Section 2415 to clarify its scope. See Section 9 of the Debt Collection Act of 1982, Pub. L. No. 97-365, 96 Stat. 1749, 1754, codified as 28 U.S.C. § 2415(i). Among other things, the amendments specify that "[t]he provisions of this section shall not prevent the United States or an officer or agency thereof from

collecting any claim of the United States by means of administrative offset, in accordance with section 3716 of title 31." *Ibid.*

II. Factual Background

A. Natural Gas Production in the San Juan Basin

This case concerns the production of natural gas commonly known as "coalbed" or "coalseam" gas, which is found in connection with coal formations. Compared to "conventional" natural gas (which is not produced in association with coal formations), most coalseam gas contains relatively high levels of carbon dioxide, only a marginal amount of "natural gas liquids," and little or no sulfur bearing compounds. C.A. J.A. 240. Because coalseam gas and conventional gas have different physical characteristics, the San Juan Basin has separate gas gathering and treatment systems to handle the large volumes of coalseam methane production. *Id.* at 256.

Coalbed gas, like conventional gas, is typically sold by the producers to affiliated and non-affiliated purchasers at or near the wellhead. C.A. J.A. 193. The wellhead purchasers may consume the coalbed production themselves in local residential, commercial and industrial applications; they may transport the production to downstream delivery points; or they may resell the production to various marketers or consumers at delivery points along the pipeline system. *Ibid.*

Most of the coalbed gas production that is not consumed in local markets near the production area is transported to off-lease facilities and treated into a finished condition necessary to meet quality standards for long-distance transportation by mainline pipelines. C.A. J.A. 257. Owners of coalbed production destined for mainline transportation to distant markets pay a fee for the transportation of the production from the wellhead points of production on the lease, through gathering pipeline systems, to off-lease treatment facilities. *Ibid.* At these off-lease facilities, the

gas is treated to reduce the carbon dioxide content to meet the quality requirements of downstream, high-pressure, mainline pipelines. *Ibid.* Those quality standards are more stringent than the standards of pipelines that gather gas at the well. The less stringent quality standards of wellhead gathering systems are typically incorporated by wellhead gas sales contracts that establish the quality standards producers must meet.

B. The 1996 Dear Payor Letter

Until the events giving rise to this case, San Juan Basin production that met the quality requirements of typical wellhead sales contracts was considered to be in marketable condition, without regard to whether the production was consumed in untreated condition in local markets or later treated to meet the more stringent quality standards of mainline pipelines used to transport gas to distant markets. The costs incurred to transport untreated production over gathering systems to the off-lease treatment facilities, and the treatment costs incurred to meet the transportation requirements of mainline pipelines, were regarded as deductible transportation costs, not costs incurred to put the production in marketable condition to be borne solely by the producers.

On April 22, 1996, the MMS issued a "Dear Operator/ Payor" Letter to producers of coalbed methane gas in the vicinity of New Mexico's San Juan Basin. App., *infra*, 170a-174a. The 1996 Payor Letter provided new "guidelines" to producers on how to report and pay royalties on coalbed methane. *Id.* at 170a. For the first time, the government claimed a royalty entitlement based on the *enhanced* value of coalbed methane *after* transportation to downstream treatment facilities and treatment in those facilities to meet mainline pipeline quality requirements. *Id.* at 170a-171a. The 1996 Payor Letter asserted that, for royalty purposes, the coalbed methane's "value" cannot be reduced to account for the costs of placing it in marketable condition, and that

the coalbed methane was not in marketable condition until it was transported to and treated in gas treatment plants to meet the quality specifications of mainline pipelines. *Ibid.*

That 1996 Payor Letter had two consequences. First, for any sales of untreated gas at the wellhead (*i.e.*, at the lease), some of the downstream costs of transporting the gas to the treatment facilities and all of the costs of treatment had to be *added* to the proceeds of the sales on untreated gas to determine the government's royalty value. Second, for sales of treated gas away from the lease, some of the costs of transporting and all of the costs of treating the gas could *not be deducted* so as to calculate the value of the gas at the lease. App., *infra*, 171a-173a. By requiring the addition of downstream transportation and treatment costs to proceeds for wellhead sales of untreated gas at the lease, and by disallowing the deduction of such costs from proceeds received for sales of treated gas downstream from treatment facilities, the government required the payment of royalties based on a value that *exceeds* the actual value of the production *at the lease*.

C. Agency Proceedings

1. On May 27, 1997, the MMS issued an order ("Amoco MMS Order"), directing Amoco to pay additional royalties based on an audit determining that Amoco had not computed royalties in accordance with the 1996 Payor Letter. App., *infra*, 144a-156a. On September 12, 2000, the Assistant Secretary of the DOI issued a decision ("Amoco Decision") denying in most respects Amoco's appeal of the Amoco MMS Order. App., *infra*, 68a-97a. Applying the requirements set forth in the 1996 Payor Letter, the Amoco Decision concluded that—even though coalseam methane was in fact commonly marketed at the lease under wellhead sales contracts—the production was not in marketable condition "prior to its subsequent treatment and transportation for use in distant markets." *Id.* at 78a. In its decision, the agency articulated a new "primary or

dominant end-use market" test for determining when gas is in "marketable condition":

> The question requiring resolution is whether the production sold at the wellhead is in marketable condition prior to its subsequent treatment and transportation for use in distant markets. In other words, is the market at the wellhead the primary market for the gas as opposed to the more distant market?

Ibid. Based on that new test, the Assistant Secretary created a new definition of "marketable condition": "I find that the mainline transporters' CO_2 quality requirements effectively establish a marketable condition standard for gas sold from the field or area." *Id.* at 82a-83a. In effect, the 1996 Payor Letter and the Amoco Decision declared that the definition of "marketable condition" would not be the "condition that the gas would be accepted by a purchaser under a sales contract typical for the field or area" near the lease. 30 C.F.R. § 206.151; App., *infra*, 187a. Instead, there would be a *per se* rule that equates "marketable condition" with the stringent quality standards of downstream interstate pipeline systems and dominant end-use markets. App., *infra*, 96a. The Amoco Decision also concluded that the Amoco MMS Order did not violate the six-year statute of limitations set forth at 28 U.S.C. § 2415(a). *Ibid.*

2. On March 24, 2000, the Assistant Secretary applied the same marketable-condition rule to ARCO/Vastar. App., *infra*, 98a-126a. Although ARCO/Vastar had presented evidence of sales of untreated coalbed methane in the production area, the Assistant Secretary ruled that the "dominant" market for gas from the area is distant end-use markets served by interstate mainline pipeline systems. App., *infra*, 104a.

On February 27, 2001, the agency denied ARCO/Vastar's petition for reconsideration of the March 24, 2000 decision. App., *infra*, 59a-67a. The agency again stated that "[m]ar-

ketability is determined in part by whether the production is satisfactory for use by those who ultimately purchase it for use." *Id.* at 64a. The agency therefore refused to accept the condition of untreated coalseam methane commonly sold under wellhead contracts as satisfying the marketable condition rule. *Id.* at 66a. The agency reasoned that "[s]ale-for-resale transactions [at or near the wellhead] * * * are not particularly informative regarding the actual marketability of the product" because much of the gas is subsequently treated and resold in distant downstream markets. *Id.* at 63a.

D. The District Court's Decision

Amoco and ARCO/Vastar sought review in the United States District Court for the District of Columbia, and the parties filed cross-motions for summary judgment. On November 14, 2003, the district court denied the motions for summary judgment filed by Amoco and ARCO/Vastar and granted the government's cross-motion. App., *infra*, 21a-56a. Although the district court characterized the agency's decisions as "somewhat circuitous," the court nevertheless affirmed the agency's rule that reducing the carbon dioxide levels of coalbed methane production was required to place the production in "marketable condition" because most of the gas would ultimately be transported to distant end-use markets. *Id.* at 32a. Accordingly, the district court held that the quality requirements applicable to mainline pipelines, used to transport gas to distant markets, effectively established the marketable condition standard for gas at the lease. *Id.* at 45a.

The district court also addressed whether the statute of limitations set forth in 28 U.S.C. § 2415(a) foreclosed the agency from collecting royalties due more than six years before the May 27, 1997, MMS Order. App., *infra*, 48a-55a. The court acknowledged a significant split of authority on whether Section 2415(a)'s limitations period applies to administrative proceedings before an agency, or instead is

limited to the filing of actions in court. *Id.* at 52a. Rejecting the Tenth Circuit's en banc decision in *OXY USA, Inc.* v. *Babbitt*, 268 F.3d 1001 (2001), and instead following *Samedan Oil Corp.* v. *Deer*, No. 94-2123, 1995 WL 431307 (D.D.C. June 14, 1995), *rev'd on other grounds*, *Indep. Petroleum Ass'n of America* v. *Babbitt*, 92 F.3d 1248, 1260 (D.C. Cir. 1996), the district court concluded that the statute of limitations in 28 U.S.C. § 2415(a) does not apply to agency efforts to impose and collect additional royalties and associated interest through agency proceedings. *Id.* at 55a.

E. The D.C. Circuit's Decision

Amoco and ARCO/Vastar appealed, and the D.C. Circuit affirmed. App., *infra*, 1a-20a.

1. Addressing the royalty valuation issue first, the D.C. Circuit acknowledged at the outset that it is possible to interpret the phrase "value of the production from the lease" in the MLA as referring to the value of production at the lease, *i.e.*, the value as the gas typically would be sold at the wellhead. App., *infra*, 8a. But the court concluded that it was reasonable for the MMS to read the phrase more broadly. *Ibid.* Specifically, the D.C. Circuit reasoned that "from the lease" could be construed as referring simply to the production's point of *origin*. *Ibid.* Under that construction, the "value of the production * * * from the lease" could mean production that originated from the lease, but valued at and after conditioning in locations other than the lease—in this case the enhanced value of treated production at off-lease treatment facilities. In so holding, the D.C. Circuit did not address the longstanding rule—both before and after the MLA's enactment—that royalty valuations are to be determined at the lease or the wellhead point of production.

The D.C. Circuit also rejected the contention that the MMS's new construction of the marketable condition rule conflicted with the agency's 1988 regulations. App., *infra*,

9a-10a. Those regulations, the D.C. Circuit agreed, defined gas in "'marketable condition' as gas acceptable to 'a purchaser under a sales contract typical for the field or area.'" *Id.* at 9a (citing 30 C.F.R. § 206.151). But the court accepted the MMS's view that, because much of the gas would eventually be treated and *resold* for use in distant markets, sales for such "*treated* gas were typical for the area, while those for untreated gas were not." *Ibid.* (emphasis in original). The court of appeals reasoned that neither the definition of "field or area" nor the requirement of "marketable condition" contained an express geographic limit. *Id.* at 10a. That conclusion, the court further reasoned, was bolstered by the agency's provision of transportation allowances for moving gas off the lease, which necessarily assumes "that valuation of gas 'at a point (e.g., sales point or point of value determination) off the lease' is permissible." *Ibid.*

2. Finally, the D.C. Circuit upheld the district court's holding that the statute of limitations found at 28 U.S.C. § 2415(a) does not apply to orders assessing additional royalties. App., *infra*, 16a-20a. The D.C. Circuit reasoned that, because the statute of limitations by its terms precluded any "action for money damages" unless "the *complaint* is filed within six years after the right of action accrues," the limitations period applies only to "a suit in a court of law," and not to "an agency enforcement order that happens to concern money due under a statutory scheme." *Id.* at 16a-17a (emphasis added).

The D.C. Circuit acknowledged that its holding rendered a portion of the statute wholly superfluous. App., *infra*, 17a-18a. In particular, Section 2415(i) created an exception to the limitations period for agency efforts to collect debts "by means of administrative offset"; that exception would be wholly unnecessary if the limitations period did not apply to administrative agency actions in the first place. *Id.* at 17a-18a. For that very reason, other courts of appeals—

invoking the rule that statutes should not be construed to render any portion superfluous—had interpreted Section 2415(a) as extending to administrative actions as well as actions filed in court. *Ibid.* (citing *OXY USA* v. *Babbitt*, 268 F.3d 1001 (10th Cir. 2001) (en banc) and *United States* v. *Hanover Ins. Co.*, 82 F.3d 1052 (Fed. Cir. 1996)). But the D.C. Circuit disagreed with the reasoning of those decisions. *Id.* at 19a. Instead, largely following the dissenting opinions in those cases, the D.C. Circuit ruled that Section 2415(a) does not apply to agency proceedings, including those seeking money under a contract. *Id.* at 19a-20a.

REASONS FOR GRANTING THE PETITION

The court of appeals' decision in this case upholds agency orders that re-interpret the Mineral Leasing Act ("MLA"), as well as Mineral Management Service ("MMS") regulations—re-interpretations that would impose hundreds of millions of dollars of additional royalty obligations on pre-existing leases. Under those rulings, these gas producers no longer pay royalties based on the value of extracted gas at the wellhead (*i.e.*, "at the lease"). Instead, they now must pay royalties on the *greatly enhanced* value that extracted gas has *after* it is sold to purchasers, removed from the lease, transported to off-lease treatment plants, and processed to the finished quality necessary for transportation over high-pressure, mainline pipelines to distant end-use markets. That interpretation is inconsistent with the plain text of the MLA, because it requires royalty payments in excess of the "value of production removed or sold from the lease." It is contrary to the long-standing construction of similar royalty provisions and traditional practice for centuries before the MLA's enactment and half a century after. And it is inconsistent with the decisions of other courts, which recognize that the "value of production removed or sold from the lease" requires production to be valued *at the lease*, not at off-lease locations after the

production has been enhanced in value by putting it into finished condition.

The D.C. Circuit's decision also creates an express and irreconcilable conflict on the proper construction of the 28 U.S.C. § 2415(a). Many courts of appeals have held that Section 2415(a)'s limitations period for "action[s] for money damages brought by the United States or an officer or agency thereof * * * founded upon * * * contract" extends to *administrative* orders seeking additional money allegedly due under a lease or other agreement. *OXY USA, Inc.* v. *Babbitt*, 268 F.3d 1001, 1009 (10th Cir. 2001) (en banc) (holding that Section 2415(a) governs MMS orders assessing additional royalties); *United States* v. *Hanover Ins. Co.*, 82 F.3d 1052, 1055-56 (Fed. Cir. 1996) (holding that Section 2415(a) governs Customs Service actions to enforce a claim for antidumping duties); see also *United States* v. *Suntip Co.*, 82 F.3d 1468, 1476 (9th Cir. 1996) (applying Section 2415(a) to require the government to "submit th[e] claim to a contracting officer within six years of accrual"). Expressly disagreeing with the holdings of those cases—and adopting the reasoning of the dissenting opinions—the D.C. Circuit held that Section 2415(a) does not apply to administrative orders for the payment of money due under a contract. That square conflict in circuit authority warrants this Court's review.

I. The D.C. Circuit's Construction Of The MLA Is Inconsistent With The Statutory Text And The Decisions Of Other Courts

A. The D.C. Circuit's Decision Departs From The MLA's Plain Meaning And The Construction Adopted By Court After Court

The MLA provides that lessees shall pay royalties of not less than 12.5 percent "in amount or value of the production removed or sold *from the lease*," 30 U.S.C. § 226(b)(1)(A) (emphasis added), *i.e.*, from "the land area covered by" the lease, 30 C.F.R. § 206.151. Naturally read, that language

requires royalties to be determined as a percentage of the value of the gas at a geographic point *before* the gas leaves the lease property. The royalty is measured as a percentage of the "amount of" gas "removed," or of the value of the gas "sold," "from the lease." The royalty is *not* measured as a percentage of gas "removed" or sold "from" an unspecified off-lease location, after being finished in a treatment facility many miles downstream.

That natural reading of the statutory language reflects centuries-old understandings. Long before the MLA's enactment, in-kind royalties owed to the crown in England (*e.g.*, in the form of ore) were deposited above ground at the place of extraction. John S. Lowe, *Defining the Royalty Obligation*, 49 SMU L. Rev. 223, 258 (1996). In this country, gas royalty agreements followed the same pattern: Contracts calling for the payment of a portion of the "'market value,' 'amount realized,' and 'market price' were used in lease royalty clauses * * * to describe a royalty *at the production point*, before the lessee applied its entrepreneurship to enhance value by transporting, processing or marketing the gas." *Id.* at 259 (emphasis added). Indeed, for more than half a century after the MLA's enactment—until the decision in this case—courts have adhered to that same rule, calculating royalties as a percentage of the value of the gas at the point of production from the lease, *before* being removed from the property and treated at off-lease facilities. See p. 18, *infra* (citing cases).

Departing from that centuries-old understanding, the D.C. Circuit in this case reasoned that gas "removed or sold from the lease" can be construed as gas that has its "origin" in the lease region. App., *infra*, 8a. Accordingly, the D.C. Circuit ruled that royalties may be calculated as a percentage of the value of gas *not* as it exists at the leasehold site of production, but instead as a percentage of the enhanced value of the gas *after* it is removed from the property and processed to a different condition at distant

treatment facilities. *Id.* at 8a-9a. Even if one sets aside (for the moment) the impossibility of reconciling that construction with the agency's regulations, see pp. 20-23, *infra*, it defies text, history, and common sense. As a matter of text, that construction fails to assess royalties on the value of "production removed or sold from the lease." Instead, it assesses royalties based on the enhanced value of treated production removed or sold *from off-lease treatment plants*. As a matter of history, it departs from the centuries-old practice of measuring value at the lease—not at off-site locales after the resource has been improved to finished quality to enhance its value.

Finally, the construction defies common sense. Natural resources often are improved in quality and increased in value through later downstream processes prior to final consumption. But that does not mean that the government, when it agrees to accept royalties based on the value of the production taken "from the lease," is entitled to base royalties on the value of the finished good to which production is later converted. The fact that oil from a particular field may be used primarily to make gasoline does not mean that the government is entitled to a percentage of the value of the gasoline. Instead, the government is entitled to royalties on the value of the resource as it customarily exists when alienated at the lease—not the finished form it acquires miles away, after being sold to others and converted into a quality suitable for different end-use markets. Indeed a producer that sells its gas production at the wellhead (at the lease) under a typical contract will have no knowledge whether the gas will be consumed in the condition sold at the wellhead, or improved in quality and resold into different markets.

It therefore comes as no surprise that court after court has construed the MLA to require royalties to be a percentage of value at the lease—at the point of production—not after improvements in quality at a point off

the lease. See *United States* v. *Gen. Petroleum Corp.*, 73 F. Supp. 225, 254 (S.D. Cal. 1947) ("Natural-gas royalties are payable on the gas as it is produced *at the well.* It is the value of that gas which must be determined.") (emphasis added), *aff'd Continental Oil Co.* v. *United States*, 184 F.2d 802, 820 (9th Cir. 1950) (royalties are "calculated * * * values *at the wells*") (emphasis added); *California Co.* v. *Udall*, 296 F.2d 384, 387 (D.C. Cir. 1961) (royalties due on production within a short distance of the wells, such that the costs of moving the gas from the neighborhood of the wells is not includable in the government's royalty); see also *Marathon Oil Co.* v. *United States*, 604 F. Supp. 1375, 1386 (D. Alaska 1985) (holding that "value of production" requires "that royalties be based on the value of production *at the lease*") (emphasis in original), aff'd 807 F.2d 759, 765-66 (9th Cir. 1986); *Indep. Petroleum Ass'n of America* v. *Armstrong*, 91 F. Supp. 2d 117, 125 (D.D.C. 2000) ("The longstanding interpretation of 'value of production,' one recognized by Interior (at least until the present matter) and affirmed by the courts, is that it refers to the value of oil or gas *at the wells*") (emphasis in original), rev'd in part, aff'd in part, *Indep. Petroleum Ass'n of America* v. *DeWitt*, 279 F.3d 1036 (D.C. Cir. 2002). The D.C. Circuit's conclusion that the MLA does not require royalty valuations to be determined "at the well" or "at the lease" cannot be reconciled with that longstanding body of precedent.

B. The Decision In This Case Departs From Decades Of Precedent and Practice

Nor does the MMS' extra-statutory "marketable condition" requirement support the decision below. In the previously leading *California Co.* decision, the D.C. Circuit adopted the quality standards in wellhead gas sales agreements as the applicable marketable condition standard. 296 F.2d at 387. Likewise here, the quality standards in wellhead gas sales contracts should set the marketable condition standard. After all, the gas is typically *sold* at the

wellhead. That *sale* establishes the fact that the gas is sold in *marketable* condition.

Distinguishing *California Co.* and similar precedents, the decision below declared that "all the gas at issue [in *California Co.*] 'was conditioned by the seller and delivered to the purchaser within a short distance of the wells,' so the question presented here"—whether to base royalties on the gas's value at the wellhead or after treatment off-lease—"did not arise." App., *infra*, 8a. But that fails to distinguish *California Co.* Here, no less than in *California Co.*, virtually *all* of the production is sold and delivered "to the purchaser" under wellhead sales contracts. *Id.* at 4a ("producers sold untreated gas at the wellhead to purchasers who would pipe the gas to treatment centers"); *id.* at 9a (acknowledging the issue is the value of "production sold at the wellhead"). Here, as in *California Co.*, the production is initially conditioned to meet the quality requirements of the receiving pipelines at or near the wellhead consistent with wellhead sales agreements. C.A. J.A. 181-83, 258. Consequently, here, as in *California Co.*, the costs incurred to place production in that on-lease marketable condition are properly included in the government's royalty—but *only* insofar as the production was "conditioned by the seller and delivered to the purchaser in the field within a short distance of the wells." 296 F.2d at 387. The fact that the *purchaser* might later process the gas further and move it to distant markets is irrelevant. Indeed, *California Co.* clarified that "costs incurred in moving gas *from* the field in the neighborhood of the wells" are *not* "includable in the royalty base." *Ibid.* (emphasis added). The same is true of the off-lease transportation and treatment costs at issue here.

The only difference between this case and *California Co.* is the agency's demand for royalties. Here, but not in *California Co.*, the agency has decided to *disregard* the value of the gas as sold under typical contracts by

producers near the wellhead. Instead, the agency insists on calculating royalties based on a percentage of the gas's value when it is *resold* after further off-site conditioning to meet the more stringent requirements for distant transport on mainline pipelines. That approach cannot be reconciled with *California Co.*; it cannot be reconciled with the historical practice of valuation at the lease; and it cannot be reconciled with the statutory text, which requires the payment of a percentage of the gas "removed from" or "sold * * * from the lease," not the gas "sold from" off-site facilities after treatment to meet stringent mainline pipeline requirements for transportation to distant end-use markets.

C. The D.C. Circuit's Decision Is Contrary To The Agency's Expressed Intent And Renders The Agency Regulations Internally Inconsistent

The decision in this case, moreover, upholds an agency construction that is inconsistent with the agency's own expressed intent, and places the agency's regulations at war with themselves. In various contexts, MMS has made it clear that it calculates royalties based on the value of gas at the lease. Nowhere did the agency explain why "production * * * from the lease" means production as sold at the lease in some contexts, but production as sold elsewhere for others.

1. The MMS's rules for calculating transportation cost allowances could not be more clear: Production is valued based on the gas's value at the lease, not based on its value off the lease. See *Revisions of Gas Royalty Valuation Regulations and Related Topics*, 53 Fed. Reg. 1230, 1257, 1261 (Jan. 15, 1988). As the D.C. Circuit noted below, the transportation allowance regulations "assume that valuation of gas 'at a point (e.g., sales point or point of value determination) off the lease' is permissible." App., *infra*, 10a. That valuation, however, is then *adjusted* for transportation costs to make sure it reflects the *value at a point on the lease*: "MMS shall allow a deduction for the reasonable

actual costs incurred by the lessee to transport [production] * * * from a lease to a point off the lease." 30 C.F.R. § 206.156(a) (emphasis added). The preamble to those 1988 regulations makes clear that the transportation allowance ensures that royalties are calculated as a percentage of value *at the lease*. 53 Fed. Reg. at 1230. It was the MMS's "policy since 1961 to grant transportation allowances when production is moved to a sales point off the lease *in order to calculate the value of the product at the lease*." *Id.* at 1257 (emphasis added). Similarly, in a more recent rulemaking, the MMS observed that "[s]ales away from (or 'downstream' from) the lease often are the *starting point* for determining royalty value, and the costs of transportation always have been allowed *in order to ascertain value at or near the lease*." See *Establishing Oil Value for Royalty on Federal Leases*, 65 Fed. Reg. 14022, 14029 (March 15, 2000) (emphasis added).

The 1988 regulations addressing the so-called "net-back" or "work-back" method for calculating the value of gas at the lease follow a similar approach. When the gas is sold or valued in markets downstream from the lease, those regulations require adjustments to calculate royalties as a percentage of the value at the lease:

> Net-back method (or work-back method) means a method for calculating market value of gas *at the lease*. Under this method, costs of transportation, processing, or manufacturing are deducted from the proceeds received for the gas * * * or from the value of the gas * * * at the first point at which reasonable values for any such products may be determined * * * to ascertain value *at the lease*.

30 C.F.R. § 206.151 (emphasis added).

Lease production volumes and uniform quality likewise are, for purposes of royalty calculations, measured at the lease, not at off-lease treatment facilities. "Royalties shall be computed on the basis of the quantity and quality of

unprocessed gas at the point of royalty settlement." 30 C.F.R. § 206.154(a)(1) (emphasis added). As the agency explained in adopting that rule:

> Historically, MMS has required that royalties be computed on the basis of the quantity and quality of unprocessed gas in marketable condition *as measured on the lease* * * * . This provision is consistent with the statutes, lease terms, and the gross proceeds valuation methodology because this provision establishes a point of royalty measurement upon which a quantity, *at a quality* is valued for royalty purposes.

53 Fed. Reg. 1230, 1255 (Jan. 15, 1988) (emphasis added).

The agency's unmistakable intent in those regulations is to calculate royalties based on the quantity and quality of the production as measured at the lease. Those regulations simply cannot support a valuation method under which royalties are based on the production's quality, after processing at a distant site, to meet the requirements for the "primary or dominant *end use* market." App., *infra*, 9a (emphasis added).

2. More fundamentally, neither the D.C. Circuit's decision nor the agency's explains how the two approaches to royalty calculation can textually co-exist. Either the MLA's reference to the value of "production * * * removed or sold from the lease" refers to the quality and quantity at the point of production or it does not. It cannot mean the quantity and quality removed or sold at the point of production for purposes of transportation expenses, work-back, and volume measurements, but quantity and quality measured at some entirely different point when it comes to determining marketable condition.

The D.C. Circuit thus erred by deferring to an agency interpretation that both contradicts the agency's express intent in adopting the regulations and construes the same text to have two different meanings at once. Deference to

an agency's interpretation of its regulations is inappropriate where an alternative interpretation is compelled by evidence of the agency's intent at the time of promulgation. *Thomas Jefferson Univ.* v. *Shalala*, 512 U.S. 504, 512 (1994) (citing *Gardebring v. Jenkins*, 485 U.S. 415, 430 (1988)). Moreover, deference to the agency's interpretation is only appropriate where the interpretation "sensibly conforms to the purpose and wording of the regulations." *Martin* v. *Occupational Safety and Health Review Comm'n*, 499 U.S. 144, 150-51 (1991) (quoting *Northern Indiana Pub. Serv. Co.* v. *Porter County Chapter of Izaak Walton League of America, Inc.* 423 U.S. 12, 15 (1975)). An agency cannot "rewrit[e] regulations under the guise of interpreting them." *Fina Oil and Chemical Co.* v. *Norton*, 332 F.3d 672, 676 (D.C. Cir. 2003). Nor can an agency rewrite or apply a single statutory phrase so as to have two diametrically opposed meanings in different contexts.

D. The Issue Is Enormously Important

Even apart from the other reasons for granting the petition, this case has enormous financial consequences. The United States has issued more than 26,000 leases for oil and gas deposits, and the annual royalties from those leases was more than $4.7 billion in 2004 alone. See Minerals Management Service, 2001-Forward MRM Statistical Information, http://www.mrm.mms.gov/MRMWebStats/Home.aspx; then follow the "Reported Royalty Revenues" hyperlink. The royalties for just the State of New Mexico that year were more than $500 million. *Ibid.*

The agency construction of the MLA affirmed in the decisions below will add hundreds of millions of dollars to those royalty obligations over the life of existing leases as the agency expands its new construction to other producers and contexts. Less than two weeks after the D.C. Circuit issued its decision in this case, the MMS issued another "Dear Payor" Letter requiring the significant costs of compressing natural gas, to prepare it for mainline trans-

portation, be added to the value of natural gas when calculating royalties—without regard for the fact that such compression typically is performed at third-party facilities. See U.S. Dep't of Interior, Minerals Management Service, Letter of Oct. 4, 2005, at 3-4. These staggering increases in royalty obligations should not be imposed absent this Court's review.

II. The Courts Of Appeals Are Squarely Divided On Whether The Statute Of Limitations In 28 U.S.C. § 2415(a) Applies To Agency Orders Mandating The Payment Of Money

The decision below also holds that MMS orders assessing royalties are not limited by the statute of limitations codified at 28 U.S.C. § 2415(a). App., *infra*, 16a-20a. As the D.C. Circuit itself observed (App., *infra*, 18a), that holding squarely conflicts with the decisions of at least two other courts of appeals, including the Tenth Circuit's en banc decision in *OXY USA, Inc.* v. *Babbitt*, 268 F.3d 1001 (2001), and the Federal Circuit's decision in *United States* v. *Hanover Ins. Co.*, 82 F.3d 1052 (1996).

A. The Ninth, Tenth, And Federal Circuits Have Held That Section 2415(a) Applies To Agency Proceedings To Recover For Breach Of Contract

Section 2415(a) provides, in relevant part:

> [*E*]*very action for money damages* brought by the United States * * * or agency thereof which is founded *upon any contract* * * * shall be barred unless the complaint is filed within six years after the right of action accrues or within one year after final decisions have been rendered in applicable administrative proceedings required by contract or by law, whichever is later.

28 U.S.C. § 2415(a) (emphasis added).

Court after court has concluded that Section 2415(a), by its terms, requires administrative actions seeking money

under a contract to be brought within six years. For example, the Tenth Circuit's decision in *OXY* applied Section 2415(a) to foreclose untimely MMS actions indistinguishable from the ones at issue here. In that case, the MMS issued an order in December of 1996 directing OXY USA, Inc. ("OXY") to pay additional royalties for oil production from federal leases in California for the period between January 1980 and September 1983. 268 F.3d at 1003-04. OXY challenged the MMS order, arguing that Section 2415(a) barred the MMS's belated demand. *Id.* at 1004. Sitting en banc, the Tenth Circuit rejected the government's contention that Section 2415(a) does not apply to administrative agency actions. Instead, the Tenth Circuit held that the MMS order is an action for money damages founded on a contract and that the six-year limitations period in Section 2415(a) therefore applies. *Ibid.*

Looking to the plain text of Section 2415, the Tenth Circuit observed that the phrase "every action" is "patently broad, and is expressly limited in scope only by reference to the possibility of a specific exception 'otherwise provided by Congress.'" *OXY*, 268 F.3d at 1005. The Tenth Circuit also pointed out that a broad reading of the phrase "every action" is consistent with the "express purpose of 28 U.S.C. § 2415(a)," which was "to establish a general statute of limitations on contract claims asserted by the government or a government agency." *Ibid.*

That conclusion is reinforced by the structure of Section 2415(a) as a whole. *OXY*, 268 F.3d at 1006. Under Subsection (f) of Section 2415, the federal government may assert claims defensively by way of an offset or counterclaim. *Ibid.* Subsection (i) expressly states that administrative offsets are exempt from the limitations period imposed by Section 2415(a). The Tenth Circuit reasoned that, if Congress believed that Section 2415(a) did not apply to administrative actions, then Congress would not have needed to carve out selected administration actions (admin-

istrative offsets) from Section 2415(a). 268 F.3d at 1006. It is, of course, wholly inappropriate to construe a statute so as to render any part of it superfluous.

The Tenth Circuit likewise held that the MMS order for additional royalties constituted an action for "money damages" within the meaning of Section 2415. The MMS order was based upon a contract, and the usual remedy for breach of contract is money damages. *OXY*, 268 F.3d at 1008. Moreover, the Tenth Circuit observed, the MMS order demanding additional royalties were indistinguishable from other government claims to recover money in which the limitations period in Section 2415(a) had been found to apply. *Ibid.*

In *Hanover*, 82 F.3d 1052, the Federal Circuit reached the same conclusion. That case concerned whether Section 2415(a) barred the Customs Service from seeking antidumping duties and interest in an agency enforcement action. Like the Tenth Circuit in *OXY*, the Federal Circuit concluded that Section 2415(a)'s six-year limitations period applies to administrative actions and is not limited to cases filed in court: An "[e]xamination of the language and the structure of section 2415(a) leaves the conviction that, absent an express exception, Congress intended that agencies assert their claims within six years or lose the right to enforce them." *Id.* at 1055.

The Ninth Circuit's decision in *United States* v. *Suntip Co.*, 82 F.3d 1468 (1996), is to the same effect. The question in *Suntip* was whether Section 2415(a) barred agency claims under the Contract Dispute Act for breach of federal timber sale contracts. Rejecting the contention that Section 2415(a)'s six-year limitations period is limited to actions in court, the Ninth Circuit held that the government must "submit that claim to a contracting officer within six years of accrual." *Id.* at 1476.

B. The D.C. Circuit's Decision Conflicts With The Decisions Of The Ninth, Tenth, And Federal Circuits

In direct conflict with the Ninth, Tenth, and Federal Circuits, but consistent with an unpublished decision of the Fifth Circuit,[3] the D.C. Circuit's decision in this case held Section 2415(a) does not apply to agency proceedings seeking the payment of money. App., *infra*, 20a. The D.C. Circuit acknowledged that the Tenth and Federal Circuits had held that "subsection 2415(a) can apply to other administrative proceedings." *Id.* at 18a. But the D.C. Circuit rejected those courts' reasoning, holding that an MMS order for royalties is neither an action for "damages" nor a "complaint" within the meaning of Section 2415(a). Those terms, the D.C. Circuit ruled, refer exclusively to actions filed in court. *Id.* at 16a-17a. That construction cannot be reconciled with the decisions of the other courts of appeals, and the D.C. Circuit made no attempt at reconciliation. To the contrary, it acknowledged its disagreement with those decisions, and followed the reasoning of the dissenting opinions instead. *Id.* at 18a.

The D.C. Circuit's decision, moreover, is inconsistent with the ordinary understanding of statutory text. Courts often refer to actions for money owed under contract, whether before an agency or a court, as damages actions. See *OXY*, 268 F.3d at 1008; *United States* v. *Sackett*, 114 F.3d 1050, 1052 (10th Cir. 1997) (action to recover on defaulted Small Business Administration loans); *United States* v. *Alvarado*, 5 F.3d 1425, 1428 (11th Cir. 1993) (claim for damages on a promissory note). Congress likewise has used the term "complaint" and "damages" in connection with efforts to recover monetary compensation through administrative proceedings. See, *e.g.*, 15 U.S.C. § 45(b); 15

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[3] *Phillips Petroleum Co.* v. *Johnson*, No. 93-1377, 1994 WL 484506 (5th Cir. Sept. 7, 1994) ("Agency orders are * * * not barred by the limitations period of § 2415").

U.S.C. § 522; 25 U.S.C. § 2713; 29 U.S.C. § 160(b). There is no reason to believe Congress meant those words to have a narrower meaning here.

The D.C. Circuit's crabbed reading of Section 2415(a) is also at odds with the rule that statutes should be interpreted consonant with "the provisions of the whole law, and * * * its object and policy." See *John Hancock Mut. Life Ins. Co.* v. *Harris Trust and Sav. Bank*, 510 U.S. 86, 94-95 (1993); see also *FDA* v. *Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) ("A court must therefore interpret the statute 'as a symmetrical and coherent regulatory scheme,' *Gustafson* v. *Alloyd Co.*, 513 U.S. 561, 569 (1995), and 'fit, if possible, all parts into an harmonious whole,' *FTC* v. *Mandel Bros., Inc.*, 359 U.S. 385, 389 (1959)."). As the Tenth Circuit recognized in *OXY*, subsection (i) of Section 2415(a) states that *administrative offsets* are exempt from the limitations period imposed by Section 2415(a). *OXY*, 268 F.3d at 1006. That evidences Congress' intent that Section 2415(a) otherwise apply to administrative proceedings. By contrast, the D.C. Circuit's contrary construction renders Section 2415(i)'s exception for administrative offsets wholly superfluous, as the D.C. Circuit itself conceded, App. *infra*, 18a. If the limitations period does not apply to any administrative proceedings in the first instance, the exception for offsets in administrative proceedings would serve no function at all. The D.C. Circuit's narrow reading of "damages" and "complaint" is also inconsistent with the overall objective behind Section 2415(a), which was to provide a broad, catch-all limitations period. *OXY*, 268 F.3d at 1005.

The D.C. Circuit attempted to reconcile the import of subsection (i) with its narrow interpretation of Section 2415(a) by referring to legislative history that, in its view, showed that subsection (i) was a compromise between the Comptroller General and the Justice Department. App., *infra*, 18-19a. Putting aside the legislative history indi-

cating that Congress intended Section 2415(a) to limit actions before courts and agencies alike,[4] the D.C. Circuit's attempt to utilize legislative history to alter the plain import of subsection (i) is contrary to settled principles of statutory construction. See *Ratzlaf* v. *United States*, 510 U.S. 135, 147 (1994) ("There are, we recognize, contrary indications in the statute's legislative history. But we do not resort to legislative history to cloud a statutory text that is clear") (footnote omitted); *Missouri Pac. R. Co.* v. *United States*, 278 U.S. 269, 278 (1929) (holding that, where statutory text is clear, "legislative history may not be used to support a construction that adds to or takes from the significance of the words employed.")

C. The Conflict Concerning The Meaning Of Section 2415(a) Is Of Recurring Importance In Many Contexts.

As the D.C. Circuit observed, Congress has since amended the Mineral Leasing Act to provide a specific limitations period for MMS demands for money under that statute. See App., *infra*, 16a.[5] But whether Section 2415(a) applies to agency proceedings remains an issue of recurring and increasing importance in many contexts.

Both the Federal Circuit and the Ninth Circuit decisions holding Section 2415(a) applicable to administrative proceedings arose outside the Mineral Leasing Act context. In *Hanover*, *supra*, for example, the Federal Circuit held that

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[4] See *Phillips Petroleum Co.* v. *Lujan*, 4 F.3d 858, 863 (10th Cir. 1993) ("The legislative history in support of § 2415(a) indicates Congress was motivated in part by notions of fairness and equity in government dealings with private litigants, and further motivated to reduce the costs of record keeping and encourage *prompt agency* actions on claims.") (emphasis added).

[5] Congress established an across-the-board seven-year statute of limitations for production after September 1, 1996. See Federal Oil and Gas Royalty Simplification and Fairness Act of 1996, Pub. L. No. 104-185, 110 Stat. 1700 (codified at 30 U.S.C. § 1724).

Section 2415(a) barred the Customs Service from seeking antidumping duties and interest, even though Customs sought the duties in an agency enforcement action. An "[e]xamination of the language and structure of Section 2415," the Federal Circuit held, "leaves the conviction that, absent an express exception, Congress intended that agencies assert their claims within six years or lose the right to enforce them." *Hanover*, 82 F.3d at 1055. Similarly, in *Suntip*, *supra*, the Ninth Circuit applied Section 2415(a) to bar untimely agency action under the Contract Dispute Act in connection with an alleged breach of federal timber sale contracts. Explaining the limitations that Section 2415(a) places on government claims, the Ninth Circuit stated that the government must "submit [its] claim to a contracting officer within six years of accrual." *Suntip*, 82 F.3d at 1476.

The *Hanover* and *Suntip* decisions both demonstrate that whether the limitations period found in Section 2415(a) applies both to administrative and judicial proceedings, or solely to judicial proceedings, is a question that arises in many contexts other than oil and gas leases. Indeed, the issue can arise under any of the many statutory schemes in which an agency may initiate proceedings to recover money under an agreement. The timeliness of government actions for money ought not depend on the happenstance of the court of appeals in which agency proceedings are enforced or reviewed. This Court should grant the petition and resolve the square and irreconcilable conflict among the courts of appeals.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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